

RULEMAKING NOTICE FORM

Notice Number 2019-28

Rule Number He-W 538

<p>1. Agency Name & Address:</p> <p>Dept. of Health & Human Services Division of Medicaid Services 129 Pleasant Street, Brown Bldg. Concord NH 03301</p>	<p>2. RSA Authority: <u>RSA 161:4-a, IX</u></p> <p>3. Federal Authority: <u>42 CFR 440.210; 42 CFR 440.220; 42 CFR 440.165</u></p> <p>4. Type of Action:</p> <p>Adoption <u>X</u></p> <p>Amendment <u> </u></p> <p>Repeal <u> </u></p> <p>Readoption <u> </u></p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Certified Midwife Services**

6. (a) Summary of what the rule says and of any proposed amendments:

He-W 538 specifies the Medicaid services that can be provided by certified midwives pursuant to RSA 326-D for Medicaid beneficiaries in the Department of Health and Human Services' (Department) fee for service (FFS) program. Most of the rules in He-W 538 expired on 6/25/2018, and this proposal would adopt the expired rules with minor changes. The definitions of "Medicaid", "recipient", and "Title XIX" in He-W 538.01(b), (e), and (f) have not expired and are being readopted.

The proposed changes to the expired rules are as follows:

- **Changing references from Title XIX to Medicaid.**
- **Making an editorial change in He-W 538.02 from a reference to the rule to the words "this part".**
- **Removing the word "participating" in He-W 538.03 because the word is unnecessary as all providers enrolled with NH Medicaid are considered participating.**
- **Inserting the name of the Departmental unit that monitors utilization review (the Program Integrity Unit) and providing more information on the purpose of the unit's utilization review.**
- **Changing "provider" to a NH certified midwife in He-W 538.08 to provide more clarity.**
- **Adding requirements that all documentation be legible and in English, and that documentation must be available upon the Department's request. These changes were identified as needed by the Program Integrity Unit based on the Unit's experience. However, the requirement that providers make documentation available to the Department is not a new requirement because it is part of the provider agreement each provider signs with the Department.**

6. (b) Brief description of the groups affected:

The rule impacts all Medicaid recipients and certified midwife service providers.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement

Rule Section	Statute Implemented
He-W 538.01	RSA 326-D:2; RSA 326-D:6
He-W 538.02	42 CFR 440.210, 42 CFR 440.220, 42 CFR 440.225
He-W 538.03	RSA 326-D:2, 42 CFR 440.165, 42 CFR 440.210, 42 CFR 440.220, 42 CFR 440.225
He-W 538.04	RSA 326-D:1 and RSA 326-D:12
He-W 538.05	RSA 326-D:1, V
He-W 538.06	42 CFR 455, 42 CFR 456
He-W 538.07	42 CFR 433.139
He-W 538.08	42 CFR 447.15, RSA 161:4, VI(a)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Kim Reeve, Esq.** Title: **Legal Counsel – Admin Rules**
Address: **NH Dept. of Health & Human Services** Phone #: **271-9640**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant St. E-mail: Kimberly.reeve@dhhs.nh.gov
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **March 21, 2019**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday March 14, 2019 1PM**

Place: **DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 19:016, dated February 11, 2019

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

In reference to He-W 538.01, there is no difference in cost when comparing the proposed rules to the existing rules. In reference to He-W 538.02 through He-W 538.08, not applicable as these rules expired in June 2018.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

The proposed rules do not change services when comparing them to the expired rules, so there will be no change to expenditures compared to previous years. Based on the average amount in claims from calendar years 2016, 2017, and 2018, the estimated annual cost is \$2,603 in state general funds, which is matched by federal dollars.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposal does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-W 538.01, previously effective 6/25/2010 (Document #9737), as amended effective 7-1-12 (Document #10139), and expired 6/25/2018 in paragraphs (a), (c), (d), and (g), cited and to read as follows:

CHAPTER He-W 500 MEDICAL ASSISTANCE

PART He-W 538 CERTIFIED MIDWIFE SERVICES

He-W 538.01 Definitions.

(a) “Department” means the NH department of health and human services.

(b) “Medicaid” means the Title XIX and Title XXI programs administered by the department which makes medical assistance available to eligible individuals.

(c) “Midwifery” means the practice of providing the necessary supervision, care and advice to women during pregnancy, labor and the postpartum period, pursuant to RSA 326-D:2, V.

(d) “New Hampshire certified midwife (NHCM)” means a person who is certified to practice midwifery in accordance with RSA 326-D:6.

(e) “Recipient” means any individual who is eligible for and receiving medical assistance under the medicaid program.

(f) “Title XIX” means the joint federal-state program described in Title XIX of the Social Security Act and administered in New Hampshire by the department under the medicaid program.

(g) “Title XXI” means the joint federal-state program described in Title XXI of the Social Security Act and administered in New Hampshire by the department under the medicaid program.

Adopt He-W 538.02 – He-W 538.08, previously effective 6/25/2010 (Document #9737), and expired 6/25/2018, to read as follows

He-W 538.02 Recipient Eligibility. All recipients shall be eligible for NHCM services, in accordance with this part.

He-W 538.03 Provider Participation. All NHCM providers shall:

- (a) Be enrolled New Hampshire medicaid providers; and
- (b) Be certified to practice midwifery in New Hampshire pursuant to RSA 326-D:6.

He-W 538.04 Covered Services. Pursuant to RSA 326-D:2, V, covered NHCM services shall include:

- (a) Providing supervision and advice during the recipient's:
 - (1) Pregnancy;
 - (2) Labor; and
 - (3) Postpartum period;
- (b) Providing care during the recipient's:

Pregnancy, including:

- a. Preventive care;
- b. The detection of abnormal conditions of the mother and fetus; and
- c. The execution of emergency measures in the absence of medical help;

(2) Labor, including:

- a. The conduction of vaginal deliveries on their own responsibility; and
- b. The execution of emergency measures in the absence of medical help; and

(3) Postpartum period, including:

- a. Preventive care for the mother and newborn;
- b. The detection of abnormal conditions of the mother and newborn; and
- c. The execution of emergency measures for the mother and newborn in the absence of medical help; and

(c) Administering medications in accordance with RSA 326-D:12.

He-W 538.05 Non-Covered Services. Non-covered services shall be those services which a NHCM is not legally recognized to perform, pursuant to RSA 326-D:1, V, including:

- (a) Operative obstetrics;
- (b) Cesarean sections;
- (c) General and conductive anesthesia;
- (d) Contraction stress tests;
- (e) Treatment to enhance fertility or procreation;
- (f) Any artificial, forcible, or mechanical means to assist the delivery; and
- (g) Induced abortions.

He-W 538.06 Utilization Review and Control. The department's provider integrity unit shall monitor utilization of NHCM services to identify, prevent, and correct potential occurrences of fraud, waste and abuse in accordance with 42 CFR 455, 42 CFR 456, and He-W 520.

He-W 538.07 Third Party Liability. All third party obligations shall be exhausted before medicaid shall be billed, in accordance with 42 CFR 433.139.

He-W 538.08 Payment for Services.

(a) Payment for services to NHCM's shall be made in accordance with rates established by the department in accordance with RSA 161:4, VI(a).

- (b) The NHCM shall submit claims for payment to the department's fiscal agent.
- (c) The NHCM shall maintain supporting records, in accordance with He-W 520.
- (d) All electronic or written documentation shall be legible and written in English.
- (e) All NHCM's shall provide documentation to the department upon request.

APPENDIX

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